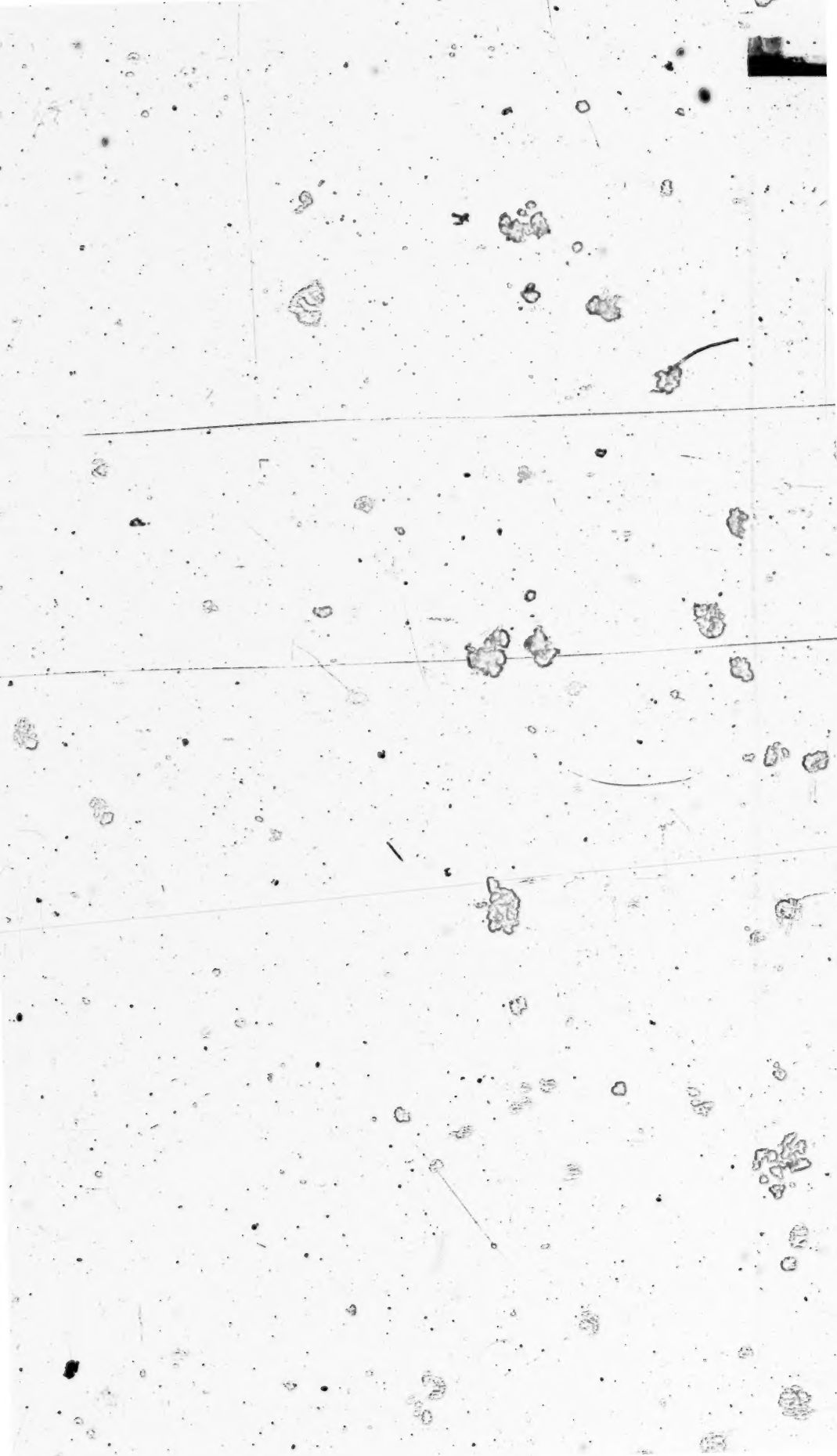

IN THE

Supreme Court of the United States

October Term 1939

No. 394

STATE OF MINNESOTA EX REL. CHARLES EDWIN PEARSON,
Appellant,

vs.

PROBATE COURT OF RAMSEY COUNTY, MINNESOTA, and HONORABLE MICHAEL F. KINKEAD, Judge of Said Court of Ramsey County,
Appellee.

APPELLEE'S BRIEF.

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OPINION BELOW.

The proceeding below was an original matter in the Supreme Court of the State of Minnesota entitled State ex rel. Charles Edwin Pearson v. Probate Court of Ramsey County and Another, 205 Minn. 545, 287 N. W. 297 (Record pp. 16-28).

STATEMENT OF THE CASE.

The Minnesota legislature enacted Laws 1939, Chapter 369, known as the psychopathic personality act, providing for the examination and confinement of chronic sexual perverts in substantially the same manner as under existing laws relating to insanity. The act is set forth in full in Appellant's Statement as to Jurisdiction, pp. 11-12, also (with some immaterial errors in the title) in Appellant's Brief, pp. 2-4. A petition was filed under the act in the probate court of Ramsey County, Minnesota, asking for the examination of the relator, and an order for hearing was made by the court. Before the time set for hearing, upon application of the relator, the supreme court of the state issued its alternative writ of prohibition directed to the probate court and the then judge, Honorable Albin S. Pearson, temporarily restraining further proceedings and requiring that cause, if any, be shown why the writ should not be made absolute. A return was made to the writ and the case was heard by the state supreme court as an original matter, with the result that the restraining order was vacated and the writ quashed. Judgment was entered accordingly in the state supreme court, and this appeal was taken therefrom by relator. Judge Pearson of the probate court having been succeeded by the Honorable Michael F. Kinkead, the latter was substituted as respondent.

Appellant attacks the act as violating the equal protection, due process, and privileges and immunities clauses of the Fourteenth Amendment to the Federal Constitution.

SUMMARY OF ARGUMENT.

The Minnesota psychopathic personality act, Laws 1939, Chapter 369, provides for the examination, commitment, and confinement of chronic and dangerous sexual perverts, as mentally defective, in substantially the same manner as insane persons.

The act is within the authority of the state, as *parens patriae,* under the police power, to provide for the care and confinement of persons who are unable to care for or control themselves and who thereby become burdensome or dangerous to society. It is preventive and remedial, not punitive. Its objects are to protect society against injuries from sex perverts and to aid them in overcoming their mental deficiencies.

The definition of psychopathic personality adopted by the act, as construed by the Minnesota Supreme Court, denoting a person who by an habitual course of misconduct in sexual matters has evidenced an utter lack of power to control his sexual impulses and who as a result is likely to attack or injure others, is sufficiently clear to meet the requirements of due process and equal protection under the Fourteenth Amendment to the Federal Constitution.

Procedure under the act, comprising an examination of the subject or "patient" by the probate court, assisted by two licensed physicians, giving the patient the right to notice and hearing, to counsel, to compulsory process for witnesses, and right to appeal, though without jury trial, complies with the requirements of due process under the Fourteenth Amendment, the proceeding being civil, not criminal, in character.

So far as any privileges and immunities of citizens of the United States may be involved, they are not affected by the act to such an extent as to constitute an abridgment in violation of the Fourteenth Amendment.

ARGUMENT.

I.

PURPOSE AND EFFECT OF THE MINNESOTA PSYCHOPATHIC PERSONALITY ACT.

The act begins with the following definition:

> "Section 1. The term 'psychopathic personality' as used in this act means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons."

In substance this means a chronic and dangerous sexual pervert.

The act then proceeds to adopt for its purposes all the laws relating to insanity cases, with certain minor changes and additions (Appellant's brief p. 3). The laws thus adopted, so far as here material, are the following: Mason's Minnesota Statutes, 1938 Supplement, Sections 8992-173 to 8992-182, inclusive, covering procedure for examination and commitment; Section 8992-143, covering court proceedings for restoration; Section 8992-164(14) to

8992-171, inclusive, covering appeals; Mason's Minnesota Statutes 1927, Section 4524, and 1938 Supplement, Sections 4523, 8992-179, an 8992-180, covering parole and discharge by the state authorities. Those laws, except the sections on appellate procedure, are set forth in full in the Appendix, *post* pp. 54-61.

Under those laws the person alleged by petition to have a psychopathic personality, designated as "the patient", has the right to an examination and hearing, with benefit of counsel and witnesses. If he is indigent his counsel fees, witness fees, and even his personal expenses, are paid by the public (1938 Supp. Sec. 8992-177). If the patient is committed, he or any person interested in him may at any time thereafter, and from time to time, petition the committing court for restoration to capacity (Id. Sec. 8992-143), with right of appeal (Id. Sec. 8992-164, subdivision 14). If his condition improves sufficiently, he may be released by the authorities in charge of the hospital to which he was committed, subject to approval by the court having jurisdiction of his case (1927 Stat. Sec. 4524, and 1938 Supp. Secs. 4523, 8992-179, and 8992-180).

The act in question provides the following additional safeguards in psychopathic personality cases:

(1) In the definition above quoted, it prescribes definite standards upon which a finding must be based, whereas in insanity cases the decision is left to the opinion of the court and the two medical examiners, based upon general legal or medical definitions;

(2) It requires the preliminary approval of the grounds for the proceedings by the county attorney;

(3) It gives a person found to have a psychopathic personality the right of direct appeal from such finding to the district court, whereas in insanity cases the person committed has no such right of appeal from the original commitment, but must either seek review by certiorari (*State v. Probate Court,* 142 Minn. 499, 172 N. W. 210), or must institute subsequent proceedings for restoration to capacity, wherein, in case of an adverse decision, he may appeal.

II.

POLICE POWER OF THE STATE OVER PSYCHOPATHIC PERSONALITIES.

The state has authority, as *parens patriae,* under the police power, to provide for the care, including confinement, if necessary, of all persons who are unable to care for or control themselves, and who thereby become burdensome or dangerous to society. This power is not confined to the definitely insane, but extends as well to other classes of incompetents, for example, to the feebleminded, to inebriates, and to juvenile delinquents.

Ex parte Januszewski, C. C. S. D., 196 F. 123.

U. S. ex rel. Yonick v. Briggs, D. C., 266 F. 434.

Ex parte Ah Peen, 51 Cal. 280.

Re Daedler, 194 Cal. 320, 228 P. 467.

Cinque v. Boyd, 99 Conn. 70, 121 A. 678.

Re Sharp, 15 Idaho 120, 96 P. 563, 18 L. R. A. (N. S.) 886.

Wissenberg v. Bradley, 209 Ia. 813, 229 N. W. 205, 67 A. L. R. 1075.

Marlowe v. Com., 142 Ky. 106, 133 S. W. 1137.

State ex rel. Olson v. Brown, 50 Minn. 353, 52 N. W. 935, 16 L. R. A. 691, 36 A. S. R. 651.

Re Peterson, 151 Minn. 467, 187 N. W. 226.

Ex parte Newkosky, 94 N. J. L. 314, 116 A. 716.

Re Watson, 157 N. C. 340, 72 S. E. 1049.

State v. Burnett, 179 N. C. 735, 102 S. E. 711.

Prescott v. State, 19 Ohio St. 184, 2 Am. R. 388.

Leonard v. Licker, 3 Ohio App. 377, 23 Ohio C. C. N. S. 442.

Com. v. Fisher, 213 Pa. 48, 62 A. 198, 5 Ann. Cas. 92.

Com. v. Carnes, 82 Pa. Super. Ct. 335.

Wisc. Ind. School v. Clark County, 103 W. 651, 79 N. W. 422.

State v. Scholl, 167 W. 504, 167 N. W. 830.

State ex rel. Matacia v. Buckner, 300 Mo. 359, 254 S. W. 179.

Vinstad v. St. Bd. of Control, 169 Minn. 264, 211 N. W. 12.

In Re Application of O'Connor, 29 Cal. App. 225, 155 P. 115.

Gaston v. Babcock, 6 Wisc. 490 (503).

County of Black Hawk v. Springer, 58 Ia. 417, 10 N. W. 791.

Re Moynihan, 332 Mo. 1022, 62 S. W. (2) 410, 91 A. L. R. 74.

Dowdell v. Peterson, 169 Mass. 387, 47 N. E. 1033.

Leavitt v. City of Morris, 105 Minn. 170, 117 N. W. 393.

Prokosch v. Brust, 128 Minn. 324, 151 N. W. 130.

Upon similar principles such measures as compulsory vaccination and sterilization of mental defectives have been sustained.

Jacobson v. Mass, 197 U. S. 11.
Zucht v. King, 260 U. S. 174.
Buck v. Bell, 274 U. S. 200.

As will be more fully developed in a later part of this brief, medical science has recognized persons with psychopathic personalities, including chronic sex perverts, as a definite class of mental defectives. They suffer from persistent mental disorders of which the chief characteristic is lack of moral sense and power of self-control. Yet they usually retain a large measure of intellectual capacity, enabling them to plan and commit crimes and to escape detection in ways that would be impossible for other types of mental defectives. Hence persons with psychopathic personalities are often a greater menace to society and get themselves into worse difficulties than persons usually classed as insane or feebleminded, and they have as great or greater need for the protective guardianship of the state.

Although the manifestations of psychopathic personality cover a much wider field, the Minnesota act is limited to those of the sexual type, as involving the gravest consequences to society. The problem of the chronic sex pervert is as old as civilization. For centuries society has attempted to deal with that problem by criminal laws. To a large extent this has been ineffectual. It has long been common knowledge that there are types of sex offenders whom no amount of punishment will restrain and who inflict severe and often irremediable injuries on many innocent victims.

every year. Recognition by the law of the fact already known to science, that the underlying cause of such misconduct is mental disease and not criminal intent, has pointed the way to a solution. The Minnesota act is based upon this principle.

Possibly psychopathic personality cases could have been handled under the existing laws relating to insanity without the express provisions of the act. In the broad sense, insanity includes any form of unsoundness of mind. At one time only raving maniacs were treated as insane, but as new forms of mental disease have been recognized by medical science from time to time, they have been included within the operation of the insanity laws without any specific amendments of the definition of insanity. However, as a general rule psychopathic personality cases have not been so included in practice because they usually involve moral deficiency rather than specific intellectual deficiency which is commonly regarded as characteristic of insanity. So it has often happened that a criminal court in a sex crime case, convinced that the accused was mentally abnormal, would order an examination of his mental condition, only to have him returned by the examining authorities because they failed to find him insane or feebleminded under the accepted definitions. The criminal court would then have no alternative, upon conviction of the defendant, but to sentence him to a penal institution. Proper treatment for his mental affliction at such an institution would be difficult or impossible. Sooner or later he would be released, only to resume his aberrant behavior and inflict further injuries upon others.

The act in question was enacted to make applicable to such cases the appropriate remedies already provided for

insanity cases. It is preventive and remedial, not punitive. Its objects are to protect society against injuries from sex perverts and to aid them, by proper confinement and treatment, in overcoming their mental deficiencies, as far as possible. The merits of this plan, as compared with the old procedure of inflicting futile punishment after crimes had been committed, are evident. In principle it is clearly within the police power of the state. The only question is whether the particular provisions of the Minnesota act violate or fail to meet some constitutional requirement.

III.

SUFFICIENCY OF DEFINITION OF PSYCHOPATHIC PERSONALITY.

Appellant attacks the definition of psychopathic personality adopted by the Minnesota act as contravening the due process and equal protection clauses of the Fourteenth Amendment on the following grounds:

(a) That it is vague, indefinite, and uncertain (Brief pages 28-44);

(b) That it creates an arbitrary and unreasonable classification (Brief pages 17-28).

(a) *The Definition is Clear.*

The definition of psychopathic personality given in Section 1 of the act (supra page 4), comprises the following elements:

(1) The existence in the person concerned of some or all of the following conditions:

(a) Emotional instability;

(b) Impulsiveness of behavior;

(c) Lack of customary standards of good judgment;

(d) Failure to appreciate the consequences of his acts;

(2) Resulting irresponsibility for conduct with respect to sexual matters; and

(3) Resulting danger to other persons.

Appellant asserts that there is much uncertainty as to the definition of psychopathic personality in general (Brief pages 10-16), and as to the various elements of the Minnesota definition in particular (Brief pages 28-39). Careful analysis refutes this contention.

In a broad sense, especially in earlier usage, the term "psychopathic" has been defined as pertaining to any mental disease or disorder.

Webster's New International Dictionary, First Edition, 1931.

New Standard Dictionary, 1931.

New Century Dictionary, 1927.

Gould's Medical Dictionary, 1931.

Stedman's Medical Dictionary, 1911.

However, in the world of medical science the tendency, especially in recent years, has been to give a limited and specific meaning to the term "psychopathic" and related terms. For example, *Stedman's Medical Dictionary,* published in 1911, gave the following definition of "psychopath":

> "The subject of a psychosis or psychoneurosis; especially one who is of apparently sound mind in the ordinary or extraordinary affairs of life, *but who is*

dominated by some abnormal sexual, criminal, or passional instinct." (Italics ours.)

In *Gould's Medical Dictionary*, published in 1931, although "psychopathy" is defined in general terms as "any disease of the mind," the related term "psychopath" is defined as "a morally irresponsible person," and the term "*psychopathia sexualis*" is defined as "the psychopathic perversion of the sexual functions."

These special connotations have become so well established that they are recognized in the second edition of *Webster's New International Dictionary*, published in 1938, in which the earlier general definition of "psychopathy" as "mental disorder in general" is repeated, followed by this new elaboration:

> "More commonly, mental disorder not amounting to insanity or taking the specific form of a psychoneurosis, but characterized by defect of character or personality, eccentricity, emotional instability, inadequacy or perversity of conduct, undue conceit and suspiciousness, or lack of common sense, social feeling, self-control, truthfulness, energy, or persistence. Different psychopathic individuals show different combinations of these traits."

To the same effect is the definition in *Henderson & Gillespie's Textbook of Psychiatry*, Fourth Edition (1936), page 392:

> "Under this heading we include persons who have been from childhood or early youth habitually abnormal in their emotional reactions and in their general behavior, but who do not reach, except perhaps episodically, a degree of abnormality amounting to certifiable insanity, and who show no intellectual defect.

> They exhibit lack of perseverance, persistent failure to profit by experience, and habitual lack of ordinary prudence. Such conditions commonly result in occupational instability, economic insufficiency, sexual excesses, alcoholism, drug addiction or delinquency."

The Minnesota Supreme Court, construing the act in the instant case, in 205 Minn. at page 553 (Record pp. 23, 24), said:

> "It is true that the term 'psychopathic' is not a part of the working vocabulary of most people. Yet the reasonably well informed recognize it as having reference to mental disorders. (See Dorland, American Illustrated Medical Dictionary (15 ed.) supra. To those concerned with mental cases, it connotes a condition of the mind causing the person afflicted to be hopelessly immoral. In either case, the fact that the law deals with the sexually irresponsible would not come as a surprise to legislators or members of the public who might have occasion to read its title."

And in the same opinion, at page 555, the court said:

> "Applying these principles to the case before us, it can reasonably be said that the language of § 1 of the act is intended to include those persons who by an habitual course of misconduct in sexual matters have evidenced an utter lack of power to control their sexual impulses and who as a result are likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of their uncontrolled and uncontrollable desire. It would not be reasonable to apply the provisions of the statute to every person guilty of sexual misconduct nor even to persons having strong sexual propensities. Such a definition would not only make the act impracticable of enforcement and perhaps unconstitutional in its application, but would also be an

unwarranted departure from the accepted meaning of the words defined. See Draper, 'Mental Abnormality in Relation to Crime,' 2 Am. Jour. Med. Jur. No. 3, p. 163."

From the definitions quoted, it is clear that psychopathic personality is now recognized by medical science as a distinct abnormal mental condition. The authorities are by no means in a state of uncertainty and confusion over the meaning of the term, as contended by appellant. They differ in their language, as they do when discussing insanity, feeblemindedness, or any other technical subject. However, they agree in principle with the statements of the Minnesota Supreme Court, supra, that psychopathic personality "connotes a condition of the mind causing the person afflicted to be hopelessly immoral," and is manifested by "an habitual course of misconduct" evidencing "an utter lack of power to control their * * * impulses." In short, it means a persistent or permanent mental and moral deficiency as distinguished from a passing or temporary lapse of self-control.

As before stated, a psychopathic is not insane or feebleminded according to modern medical or legal concepts. Insanity, generally speaking, implies that the mind of the victim has partly or wholly lost touch with the real world, so that, to him, things are not what they seem. He may have delusions or hallucinations, or may suffer from some form of dementia, mania, or melancholia. That is not usually true of the psychopathic. There is no pathological disturbance of the ordinary functions of his mind, such as attention, comprehension, memory, or association. Neither is he inherently deficient in intellectual capacity, like a

feebleminded person. His intelligence quotient may be normal or above normal. He can distinguish between right and wrong from an intellectual standpoint. Yet he is definitely abnormal, in that by reason of some deep-seated and often incurable mental deficiency he cannot control certain proclivities which normal people do control, and cannot appreciate the consequences of his acts from a moral standpoint. He does not have a low intelligence quotient, but rather a low moral quotient. Such persons are sometimes called moral imbeciles as distinguished from intellectual imbeciles. They lack what some psychiatrists call "endowed moral capacity," and this is manifested in repeated and uncontrollable irregularity of behavior. Always the main criterion is a more or less fixed or constitutional mental deficiency resulting in lack of self-control.

A review of the scientific authorities shows clearly that psychopathic personality, at least of the sexual type covered by the act in question, is well defined and that it can be diagnosed upon examination with just as much certainty as the various forms of insanity which are commonly recognized and dealt with by medical science and by the law.

Appellant warps the definition of psychopathic personality in the act into an absurd and untenable construction in order to make ground for his argument that it is vague and unfairly selective. He says that the four conditions specified as criteria of psychopathic personality, namely, emotional instability, impulsiveness of behavior, lack of customary standards of good judgment, and failure to appreciate the consequences of acts, are really symptoms, but that the act treats them as causes (Brief pages 18-19), and

that these conditions are commonly associated with other types of psychopathic personalities rather than the sexual type to which the act applies (Brief page 13). Appellant also insists that the act limits itself to certain kinds of sexual irresponsibility traceable only to the specified conditions (Brief page 18), and so excludes other kinds which may be dangerous (Brief page 19).

Argument as to whether the four specified criteria are symptoms or causes is academic and pointless so far as the purpose and effect of the act are concerned. It is immaterial whether these criteria are themselves the immediate cause of the patient's sexual perversion, or whether they are but symptoms of deeper underlying causes. The important thing is that when the described conditions are present they signify a definite abnormality of mind and character requiring treatment.

There is nothing obscure or confusing about the terms in which the four criteria are described. They depict the traits which any intelligent observer of human conduct, even without the aid of experts, would expect to find in a person who was chronically irresponsible for his conduct, or, as the Minnesota Supreme Court said, hopelessly immoral. These terms were evidently chosen and framed with care for the guidance of courts, examiners, and others concerned with the act. They are the signs of the defects of character which must be found present in order to warrant a finding of psychopathic personality.

If these terms are indefinite, what is to be said about the term "insanity", which, in most laws on the subject, stands without explanation, to be applied to an ever-widening field defined only by human experience and scientific research?

The fact is that the criteria adopted by the act provide the very element of definiteness which appellant says is lacking. They define the boundaries of the field of operation of the act. They are broad enough to include all the various forms of sexual perversion which appellant says are excluded, provided always the essential factor of danger to others is present. At the same time they are restrictive enough to limit the application of the act to those whose irresponsibility is deep-seated and chronic, excluding normal persons who may merely have yielded to a passing temptation. Such a limitation is necessary in order to prevent too loose an application of the act, as the Minnesota Supreme Court pointed out.

If there was any doubt as to the meaning of psychopathic personality adopted by the act, it has been set at rest by the construction placed upon it by the Minnesota Supreme Court in the quoted statements. Under this construction, in order to warrant a finding of psychopathic personality, it must appear: (1) that the patient has carried on an habitual course of misconduct in sexual matters, (2) thereby evidencing an utter lack of power to control his sexual impulses, (3) as a result of which he is likely to injure others. This construction is binding upon courts and examiners in Minnesota. It sets up for their guidance a plain, strict working rule, amply safeguarding the liberty of persons who may become the subjects of examination under the act.

The provisions of the act, as construed by the state supreme court in the instant case, are fully as clear as those of many other statutes, including criminals laws, which have been sustained.

Fox v. Washington, 236 U. S. 273.
Waters-Pierce Oil Co. v. Texas (No. 1), 212 U. S, 86.
Nash v. U. S., 229 U. S. 373.
Miller v. Strahl, 239 U. S. 426.
Omaechevarria v. Idaho, 246 U. S. 343.

This case is governed by well-established rules of statutory construction,—that the construction given state laws by the highest courts of the states will be accepted, that statutes should be construed, where fairly permissible, so as to be reasonable in effect and so as to avoid doubtful constitutional questions, and that it is to be presumed that state laws will be so construed by the state courts.

Jacobson v. Massachusetts, 197 U. S. 11.
Plymouth Coal Co. v. Penna., 232 U. S. 531.
Fox v. Washington, supra.
Douglas v. New York, New Haven, and Hartford R. R. Co., 279 U. S. 377.
Utah Power and Light v. Pfost, 286 U. S. 165.
Stephenson v. Binford, 287 U. S. 251.
Aero Mayflower Transit Co. v. Ga. Pub. Serv. Comm'n., 295 U. S. 285.

In *Jacobson v. Massachusetts, supra*, involving a state compulsory vaccination statute which exempted children certified as unfit for vaccination, the court held that the statute did not violate the equal protection clause because it failed to give adults a similar exemption, quoting with approval the following statement from *United States v. Kirby*, 7 Wall. (74 U. S.3 482:

"All laws should receive a sensible construction. General terms should be so limited in their application as

> not to lead to injustice, oppression or absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of that character. The reason of the law in such cases should prevail over its letter."

The court also pointed out in the Jacobson case that extreme cases of possible abuse which might be suggested were not safe guides in the administration of the law, saying:

> "We are not to be understood as holding that the statute was intended to be applied to such a case, or, if it was so intended, that the judiciary would not be competent to interfere and protect the health and life of the individual concerned."

The rules of statutory construction above stated prevail in Minnesota.

State ex rel. Decker v. Montague, 195 Minn. 277, 262 N. W. 684.

State ex rel. Kirk v. Remmey, 170 Minn. 293, 212 N. W. 445.

This disposes of appellant's fears that the application of the act would be a matter of guesswork and subject to abuse (Brief pages 29-31).

Appellant refers with apparent approval to a report made to the Illinois legislature by a committee of psychiatrists appointed by the state's attorney of Cook County, and to their definition of sexual psychopaths which was adopted in an act of that legislature, Jones' Illinois Annotated Statutes, Section 37.665 (4) (Brief pages 13-16).

A comparison of that definition with the one adopted in the Minnesota act, as construed by the state supreme court, shows that they do not differ greatly in effect, and that, if anything, the Minnesota definition is more complete and definite.

By way of contrast with the Illinois procedure, appellant asserts that the members of the Minnesota legislature had little knowledge of psychopathic personalities at the time the act in question was passed (Brief page 13), that they gave it scant consideration (Brief page 9), and that the state senate confessed ignorance of the subject by adopting a resolution asking for the appointment of a committee to study psychopathic personalities and report at the next legislature (Brief pages 10, 13).

As appellant says, the courts in Minnesota take judicial notice of legislative journals and files and other public files and records when necessary to aid in the construction of laws (Brief page 9). However, the state supreme court found it unnecessary to resort to such sources in the instant case. Its decision makes no reference to the legislative history of the act. Hence the materiality here of appellant's references in this connection may be questionable. However, since appellant has adverted to these circumstances, we deem it proper to disclose the full facts.

The records of the Governor's office and of the legislature show that some time before the introduction in the legislature of the bill for the act in question the Governor had appointed a committee to study the problem of the care of insane, defective, and psychopathic criminals. This committee was composed of ten experts of the highest standing in the state, including the professor of psychiatry and head of the department of medicine at the University of

Minnesota medical school, the chief psychiatrist of the United States Veterans' Hospital at Minneapolis, the heads of two of the state hospitals for the insane, an eminent specialist on the subject from the Mayo Clinic, and four other leading psychiatrists in private practice, with the professor of sociology at the state university as chairman. Shortly before the introduction of the bill this committee made its report to the Governor. On April 4, 1939, the day before the bill was introduced, the Governor transmitted copies of the report to both houses of the legislature, with a letter endorsing the recommendations of the committee (Minnesota legislature, House Journal April 4, 1939, page 1392; Senate Journal April 5, 1939, page 1072).

In this report, after an introductory discussion of the problems of insane, defective, and psychopathic criminals, with some comments on sexual behavior, the committee said:

> "This committee has approached the problem primarily from the standpoint of what action might be desirable on the part of the legislature. The following two recommendations are submitted for action by the legislature this session."

Then followed the recommendations, covering, in substance, (1) immediate legislation, (2) the appointment of a committee to "arrange for, supervise, or direct a more comprehensive study of the legal, medical, and administrative aspects of the whole problem of defective, psychopathic, and insane persons, both criminal and noncriminal," in cooperation with committees of the bar, medical associations, and other groups.

With respect to immediate legislation the committee recommended that the statutes defining defectives (including the feebleminded, the inebriate, and the insane) be amended by inserting "the individual with a psychopathic personality" as an additional class of defectives, also by inserting the following definition:

> "The term 'psychopathic personality' as used in this act means any person who, because of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to evaluate the consequences of his acts, or combinations of these conditions, is socially or morally irresponsible, sexually or otherwise, and who as a result of such conduct becomes a menace to the public good and requires supervision."

Further recommendations were made for changes in the probate code necessary to make the procedure for examination and commitment of the insane and other defectives applicable to persons having psychopathic personalities.

The report said further:

> "This recommendation will have the effect of extending the powers of police and prosecuting officials through the probate court to persons known to be dangerously psychopathic or defective without waiting for definite, and sometimes horrible, criminal acts to be committed. A serious limitation in present procedure is the inability of officials to deal with such persons before they commit criminal acts. The proposed changes will remedy this situation. Though the grant of powers proposed is considerable, the Committee feels that the special conditions of the definition suggested will give adequate protection to the citizen against persecution through arbitrary acts of incompetent or unfriendly officials.

"Modification of the law as suggested is highly desirable as a matter of immediate legislative action. No appropriation for additional facilities is suggested at this time. In the development of a long-time program, it is probable that additional facilities and new types of institutional treatment will need to be provided. That, however, is a matter which the Committee does not feel competent to discuss at the present time."

* * * * *

"These two recommendations are submitted as suggestions for the best procedure to be followed in dealing with the problem of the insane criminal and the sex criminal. The immediate needs of law enforcement officers are cared for in the first recommendation. In view of the many aspects involved in a long-time view of the problem, it is suggested that an interim committee of the Legislature is the best auspices under which to survey the facts and shape up a program for future action."

It will be noted that the legislature in the act in question followed quite closely the definition framed by the committee of experts, making only such changes as were necessary to limit the application of the act to the sexual type of psychopathics.

The proviso for exclusion from consideration of political or religious beliefs and other matters, quoted on page 10 of appellant's brief, was included in the amendments recommended by the committee, but was dropped out in the act, for the obvious reason that it was probably unnecessary in any event, and became wholly superfluous when the act was confined to sexual matters.

It is noteworthy that in both houses of the legislature the bill was recommended by the judiciary committees, which,

by custom, are composed of all the lawyers in the respective houses, and that it was passed in both houses without a dissenting vote.

House Journal, April 5, 1939, page 1135; April 18, 1939, page 2141.

Senate Journal, April 14, 1939, page 1398; April 18, 1939, page 1600.

The files of the senate judiciary committee show that it held public hearings on the bill, which were attended by prominent law enforcement officials, lawyers, physicians, and others. It is common knowledge that the bill received much newspaper publicity while under consideration in the legislature.

The senate resolution for the appointment of interim committees, mentioned by appellant, was in conformity with the second recommendation of the committee of experts (*Senate Journal*, April 18, 1939, page 1601). It was in no sense a confession of ignorance on the subject-matter of the act.

(b). *The Definition Makes no Arbitrary or Unreasonable Classification.*

Appellant concedes the right of the legislature to make a classification of sexually irresponsible persons for the purposes of the act (Brief page 17), but asserts that the definition of psychopathic personality which was adopted selects for treatment certain kinds of sex perverts and excludes others who are just as much in need of treatment, thereby creating an unreasonable and arbitrary classification (Brief pages 18-28).

For the most part this argument has been met under the preceding heading in this brief, pages 10-20. It was there shown that the definition was broad enough to include all cases coming within the intended field of chronic and dangerous sex perverts, yet restrictive enough to confine the application of the act to that field. Appellant could sustain his contention on this point only by a strained and illogical construction of the act, which is untenable under the interpretation given by the Minnesota Supreme Court.

Even if some types of sexually irresponsible persons were excluded under the definition, it would not necessarily invalidate the act. There is a strong presumption that classifications made by statutes are based upon adequate grounds, and they will not be held void unless clearly arbitrary.

Orient Insurance Co. v. Daggs, 172 U. S. 557.
Jacobson v. Massachusetts, 197 U. S. 11.
Batchel v. Wilson, 204 U. S. 36.
Watson v. Maryland, 218 U. S. 173.
Chicago Dock & Canal Co. v. Fraley, 228 U. S. 680.
Miller v. Wilson, 236 U. S. 373.
Price v. Illinois, 238 U. S. 446.
Middleton v. Texas Power and Light Co., 249 U. S. 152.
Dominion Hotel v. Arizona, 249 U. S. 265.
Buck v. Bell, 274 U. S. 200.
Whitney v. California, 274 U. S. 357.

The general principle was stated in *Miller v. Wilson*, *supra*, as follows:

> "If the law presumably hits at the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have applied."

In *Buck v. Bell, supra,* involving a law which provided for the sexual sterilization of mentally defective inmates of institutions, it was held that failure to extend the act to similar mental defectives outside the institutions did not violate the equal protection clause.

The cases above cited go much further than is necessary in order to sustain the reasonableness of the classification adopted by the act in question.

IV.

PROCEDURE UNDER THE ACT IS DUE PROCESS.

Appellant attacks the procedure under the act in question as failing to meet the due process requirements of the Fourteenth Amendment on the grounds (a) that it is vague, indefinite, and uncertain, and (b) that it is arbitrary and lacking in safeguards for the security of private rights (Brief pages 44-60).

Before proceeding to discuss this branch of the case, it is necessary to clear up the facts with reference to a number of assertions made in appellant's brief.

Appellant says that the "accused" (who should more properly be called the "patient", as designated in the act) has no right of release on bail (Brief page 29). This is incorrect. Release on bond at any time before commitment is provided for by Mason's Minnesota Statutes, 1938 Supplement, Section 8992-178 (*post* p. 58), unless a criminal proceeding is pending against the patient, or unless he is dangerous to the public. Although a finding of psychopathic personality would imply that the patient was dangerous to others, he would not be barred from release

on bond at any previous stage of the proceedings. Before such finding was made, the court would have full discretionary power to determine whether or not the patient might safely be released on bond. This is clearly a reasonable provision. In any event, we find no authority holding that there is any constitutional right to bail in such a proceeding.

Appellant says that under the act "upon conviction" (a term not appropriate in such proceedings) the court is required to commit the accused for the rest of his life to an asylum for the dangerous insane (Brief page 29). There is no such requirement. As in an ordinary insanity case, the commitment is without term, subject to the right of the patient or anyone interested in him to petition the committing court for release at any time (Mason's Minnesota Statutes, 1938 Supplement, Section 8992-143, *post* p. 60), with right of appeal (Section 8992-164, Subd. 14); also subject to the right of the state authorities in charge of the hospital, with the approval of a court of competent jurisdiction, to parole or discharge the patient at any time, if his condition warrants (Mason's Minnesota Statutes 1927, Section 4524, and 1938 Supplement, Sections 4523, 8992-179, 8992-180; *post* pp. 61, 58).

Appellant says that by virtue of the adoption of the procedure in insanity cases, the county attorney, who has prejudged the case and prepared the petition against the patient, is required to appear in his defense and protect his rights (Brief page 42). This is contrary to a proper construction of the law. It is true that under Mason's Minnesota Statutes, 1938 Supplement, Section 8992-174

(*post* p. 54), in an insanity case the county attorney is required to appear for a patient who has no counsel of his own, unless the court determines that the latter's interests require the appointment of other counsel. However, the application of this provision to psychopathic personality cases is necessarily excluded by reason of (1) the qualifying clause, "except as otherwise herein or hereafter provided," attached to the provision in Section 2 of the act adopting the insanity laws; (2) the express provision in the act requiring the county attorney to review the facts and prepare the petition for examination, which would be inconsistent with his appearance for the patient at any stage of the proceedings; and (3) the express provision in the act authorizing the court to appoint counsel for an indigent patient at public expense. In view of the latter provision, no constitutional question can be raised in this connection.

Appellant says that the act is indefinite as to whether the finding in a psychopathic personality case is to be made by the probate judge alone or by the two licensed doctors appointed as examiners (Brief page 43). In this connection appellant reads into the law two former provisions relating to insanity, Mason's Minnesota Statutes 1927, Sections 8958 and 8959. Both of these sections were repealed by Section 196 of Laws 1935, Chapter 72 (the probate code), being the same as Mason's Statutes, 1938 Supplement, Section 8992-196. The applicable statute is now Mason's 1938 Supplement, Section 8992-175, *post* p. 55, (same as Section 175 of the probate code, referred to in appellant's brief, page 43). This section of the probate code and Section 2 of the act in question are alike in requiring the court to appoint two duly licensed doctors of

medicine to assist in the examination of the patient. In addition the code section provides, "the examiners and the court shall report their findings * * *." Presumably this is incorporated by reference in the act in question, there being nothing therein to the contrary. There is no conflict or uncertainty about these provisions. If a finding should be improperly made in a particular case, it would be, at most, an error which could be taken advantage of by motion or upon appeal.

Iowa Central Ry. Co. v. Iowa, 160 U. S. 389, 393.
State v. Kilbourne, 68 Minn. 320, 71 N. W. 396.

The question as to the adequacy of the tribunal created by the act and whether or not a jury trial is required will be discussed later.

Appellant says that no one knows what statutes are referred to in the provision of Section 2 of the act in question that the petition shall be filed "with the judge of the probate court of the county in which the 'patient', as defined in such statutes, has his settlement or is present." (Brief pages 43-44). This provision appears immediately after the provision referring to the laws relating to insanity cases. Those laws provide that a petition for examination shall be filed "in the court of the county of the patient's settlement or presence." (Mason's Statutes, 1938 Supplement, Section 8992-174, *post* p. 54). The word "patient" is defined by the same section as "any person for whose commitment as an insane, inebriate, feebleminded, or epileptic person proceedings have been instituted or completed." The term "settlement" as used in these provisions and elsewhere in the laws relating to insanity is

well understood in Minnesota, both through statutory definition and long-established usage. It could refer to nothing else but settlement for poor relief purposes, as defined by Mason's Minnesota Statutes, 1938 Supplement, Section 3161, as amended by Laws 1939, Chapter 398. Thereunder settlement means, substantially, a person's regular place of residence, with certain qualifications as to time. It is of principal importance in proceedings for the examination of the insane or other mental defectives for the purpose of fixing the liability of the proper county for expenses. (Mason's Statutes, 1938 Supplement, Section 8992-177, *post* p. 54). It has no material bearing on the personal rights of the patient, in view of the fact that he may be examined in any county in which he is present, whether it happens to be the county of his settlement or not.

Appellant says that a person may be committed under the act without benefit of counsel (Brief page 57). This ignores the provisions of Section 2 of the act giving the patient the right to be represented by counsel, also the provisions of the same section and of Mason's 1938 Supplement, Section 8992-177 (*post* p. 57), providing for appointment of counsel at public expense for an indigent patient. The question whether the right to counsel at public expense is essential to due process will be discussed later.

In saying that a person may be committed under the act without the presence of witnesses in his behalf, because there is no applicable provision of law for compulsory process or for the payment of witness fees or mileage (Brief pages 57-58), appellant overlooks the provision in Section 2 of the act in question that the patient shall be entitled to subpoenas from the court to compel the attendance of wit-

nesses in his behalf, also the provision of the insanity laws, incorporated by reference, for payment by the county of the fees and mileage of all witnesses (Mason's Statutes, 1938 Supplement, Section 8992-177, *post* p. 57). No distinction is made between witnesses subpoenaed in support of the petition and those subpoenaed in behalf of the patient. In view of these provisions it is difficult to see how any constitutional question respecting the patient's right to obtain the attendance of witnesses could be raised. However, the question as to how far that right is involved in due process will be discussed later.

Appellant fears that the act may be made the means of blackmail (Brief page 29). What bearing this has on the issues is not clear. However, there are some safeguards which would make it rather difficult to use proceedings or threats of proceedings under the act for purposes of persecution or extortion. First there is the requirement for preliminary consideration of the grounds for the petition by the county attorney. Appellant says that this provision is weak because the law does not say expressly that the county attorney must investigate (Brief page 40). However, it is required that before proceedings are instituted the county attorney shall be satisfied that good cause exists. Whether he investigates further or not, it is to be presumed that he will at least consider carefully the facts submitted to him, and that unless he is satisfied that they are sufficient he will refuse to file a petition. The next safeguard is provided upon the filing of the petition, when it becomes the duty of the probate judge to determine that the proceedings are for the best interests of the patient or of his family or of the public before proceeding further (Mason's 1938 Supplement, Section 8992-174, *post* p. 55).

This is not a criminal proceeding, so the same strictness is not required as in criminal cases. However, the preliminary steps under the act, as above outlined, correspond closely with the established practice in Minnesota in criminal cases. The statute authorizes any magistrate to issue a warrant of arrest for crime upon a sworn complaint made before him, if it appears to him that the alleged offense has been committed (Mason's Statutes 1927, Section 10577). However, although not expressly required by law, it is the general practice of magistrates to require complainants in criminal cases, except those of minor degree, to secure the approval of the county attorney before issuing warrants of arrest.

Even if trumped-up charges should in some way get past the preliminary safeguards, it is highly improbable that they would survive examination by the probate court and two licensed physicians, with the patient protected by counsel.

On the whole, the difficulties in the way of filing or sustaining false charges under the act are such as to discourage abuse of the proceedings. A further deterrent is found in Mason's 1938 Supplement, Section 8992-182 (*post* p. 59), which makes the malicious filing of a false petition a felony.

All the fears of abuse expressed by appellant might just as truly be urged against any other law dealing with mental deficiency or crime. It is impossible to contrive any kind of law so perfect that it cannot be abused. Much must be left to the judgment and integrity of the courts and other agencies charged with the administration of the laws. That they will act conscientiously and reasonably is always presumed.

Jacobson v. Massachusetts, supra, p. 18, and other cases there cited.

The past abuses conceived by appellant do not go to the merits of the act, but would, if they occurred, be errors in specific cases, for which adequate remedies are provided by appeal or otherwise.

Iowa Central Ry. Co. v. Iowa, supra, p. 29.

State v. Kilbourne, supra, p. 29.

It would be difficult to frame clearer procedural specifications than those prescribed in the act in question.

(b) *Procedure is not Arbitrary nor Lacking in Safeguards for Private Rights.*

There remain for discussion the following points urged by appellant in support of his contention that procedure under the act fails to meet the due process requirements of the Fourteenth Amendment in that it is arbitrary and lacking in safeguards for private rights (Brief pages 57-58—order rearranged for purposes of this discussion):

(1) That no jury trial is allowed;

(2) That the patient may be committed without benefit of counsel;

(3) That compulsory process for obtaining witnesses for the patient is not provided;

(4) That the hearing is private;

(5) That the hearing may be held in a county remote from the patient's residence;

(6) That the examining tribunal is not competent.

Before discussing the particular points, we call attention to some general considerations bearing upon all of them.

The state supreme court in its decision in the instant case determined that proceedings under the act are not criminal in character (205 Minn. page 556; Record page 27). Hence the case is governed by the rules applicable to civil proceedings. It may be conceded that in construing the provisions of the act due weight should be given to the fact that it affects the liberties of citizens. However, that does not make applicable the rules which obtain in criminal cases. To a large extent appellant's contentions pertain to rights guaranteed by the state consitution in such cases. The decision of the state supreme court is conclusive thereon. The only question at issue here is, does the act meet the requirements of the Fourteenth Amendment with respect to due process of law?

The essentials of due process under the Fourteenth Amendment in both civil and criminal cases are (1) reasonable notice and (2) a fair opportunity to be heard. Subject thereto, the procedure in all such cases is under the control of the states.

Iowa Central Ry. Co. v. Iowa, 160 U. S. 389, 393.
Simon v. Craft, 182 U. S. 427, 436.
Missouri ex rel. Hurwitz v. North, 271 U. S. 40, 42.
Hardware Dealers Mutual Fire Ins. Co. v. Glidden Company, 284 U. S. 151, 158.
Snyder v. Massachusetts, 291 U. S. 97, 105.

It follows that all of the matters of procedure in respect of which appellant asserts the act is deficient are within the power of the state to provide for, regulate, or omit entirely, as it may see fit (subject to possible qualifications in

respect of the right to counsel and witnesses, to be discussed later). With the exception of the right to a jury trial, none of these points was passed upon or even expressly mentioned by the state supreme court in its decision, and how far they were urged by appellant upon the attention of the court does not appear from the record. The court said (205 Minn. page 556; Record page 27):

> "The final argument of the relator is that the act denies a 'patient' a jury trial and fails to secure certain other rights of defendants in criminal proceedings. Since the proceedings here in question are not of a criminal character, we will confine ourselves to consideration of relator's right to a jury trial."

The court then proceeded to develop its conclusion that there was no constitutional right to a jury trial in proceedings under the act, but said nothing further about the other procedural points. The effect was to hold that there was no violation or denial of appellant's rights with respect to any of these points. This is conclusive upon appellant. The matters in question being entirely within the jurisdiction of the state, he is precluded from raising them here, subject to the qualifications as to counsel and witnesses hereinafter noted.

However, in order to meet any questions that may arise as to the several points mentioned, it may be proper to discuss them briefly.

(1) *Jury Trial.*

A jury trial is not a requisite of due process under the Fourteenth Amendment.

Walker v. Sauvinet, 92 U. S. 90.

Hardware Dealers Mutual Fire Ins. Co. v. Glidden Company, supra, p. 158.

Snyder v. Massachusetts, supra, p. 105.

Palko v. Connecticut, 302 U. S. 319, 323-325.

Hence the decision of the state supreme court that there was no constitutional right to a jury trial in proceedings under the act is conclusive.

(2) *Right to Counsel.*

The right to the aid of counsel is incident to a fair hearing, hence is a requisite of due process in both civil and criminal cases.

Powell v. Alabama, 287 U. S. 45, 69.

With respect to the further question as to the right to have counsel appointed by the court. the court in that case held as follows (page 71):

> "All that it is necessary now to decide, as we do decide, is that in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble-mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law; * * *. In a case such as this, whatever may be the rule in other cases, the right to have counsel appointed,

when necessary, is a logical corollary from the constitutional right to be heard by counsel."

And further (page 73):

"The duty of the trial court to appoint counsel under such circumstances is clear, as it is clear under circumstances such as are disclosed by the record here; and its power to do so, even in the absence of a statute, can not be questioned. Attorneys are officers of the court, and are bound to render service when required by such an appointment. See Cooley, Const. Lim., *supra,* 700 and note."

Although proceedings under the act in question are not criminal (*supra* p. 34), they involve personal liberty, and it may be conceded that the patient in such a case should have the benefit of every right of due process that would be given under the Fourteenth Amendment in a criminal case of like gravity. As before pointed out, the act in question goes as far as could be expected in authorizing appointment of counsel for a patient at public expense (*supra* p. 30; appellant's brief p. 3). It is to be presumed that the probate court in any particular case will take whatever action is necessary and within its power to effectuate the provisions of the law and secure to the patient the full benefit of the rights which are accorded him. If the court should fail to do so, it would be error for which ample remedies are available.

(3) *Compulsory Process for Witnesses.*

It has been held that compulsory process for securing the attendance of witnesses is not a requirement of due process under the Fourteenth Amendment in a civil proceeding.

Missouri ex rel. Hurwitz v. North, supra.

So far as we can discover, the question whether the Fourteenth Amendment would require compulsory process for witnesses in a criminal case or other case involving personal liberty has never been decided by this court. However, conceding that the same principles ought to apply to compulsory process for witnesses as obtain with respect to the appointment of counsel, it is evident that the act does all that could be desired in this respect (*supra* p. 30; appellant's brief p. 3). The fears apparently entertained by appellant that these provisions are ineffectual are quite groundless. In Minnesota the probate court is a court of record created by the state constitution, Article VI, Section 7, and vested by law with the same general powers to issue subpoenas, compel attendance of witnesses, and punish for contempt as are usually possessed by courts of general jurisdiction (Mason's 1938 Supplement, Section 8992-2). A subpoena may be served by any person, not necessarily by an officer (Mason's Statutes 1927, Section 9810). Failure of the person subpoenaed to attend is punishable by any court of record as contempt of court (Id. Section 9812), and the court may also issue an attachment to bring the witness before it (Id. Section 9813). It is to be presumed that the court would exert its powers so far as might be necessary to secure any available material witnesses desired in behalf of the patient in a particular case.

(4) *Privacy of Hearing.*

We are unable to find any authority for the proposition that it is necessary that a hearing be open to the public in order to comply with the due process requirements of the Fourteenth Amendment. At any rate, privacy of hearings is not mandatory under the act, which merely authorizes the probate judge, at his discretion, to exclude the general public (appellant's brief p. 3). This is obviously, in large part at least, for the benefit of the patient. The patient has the right to have his counsel and witnesses at the hearing. Should he or his counsel request that any others be permitted to attend, it would no doubt be granted by the court. As under the preceding headings, it is to be presumed that the court will have due regard for the rights of the patient, constitutional or otherwise, and that any errors that might be committed in that respect would be subject to correction by the proper remedies.

(5) *Place of Hearing.*

The act provides that the hearing shall be held in the county in which the patient has his settlement, that is, his permanent residence, or is present, (*supra*, p. 29; appellant's brief p. 3). Appellant's complaint is that a patient may be forced to submit to a hearing at a place remote from his residence. If he betook himself to such a place and there became a potential menace to society, he could hardly complain of being examined there, any more than one charged with crime could complain of being tried in the county where the crime was committed. If it should appear in any

case that holding the examination in a county remote from the patient's residence would deprive him of a fair hearing, due to inability to secure witnesses or other cause, the court of that county would undoubtedly have authority, upon application of the patient or his counsel, to direct that the petition be transmitted for filing and for further proceedings in the county of the patient's settlement. If it should appear that any rights of the patient were violated in this connection, it would be subject to redress through the proper remedies, as in the other cases mentioned.

(6) *Adequacy of Examing Tribunal.*

Appellant fears that the doctors appointed on the examining tribunal may not be equal to the occasion, and that the services of qualified psychiatrists will be lacking (Brief page 58). The examining board, consisting of the probate judge (or, in case of his disability, the court commissioner), and two licensed doctors of medicine, is composed in the same way that boards have been composed in insanity cases for many years (Mason's Statutes, 1938 Supplement, Section 8992-175, *post* p. 55). It is not out of place to say that the State of Minnesota is widely known for its progressive and humane methods of dealing with the insane and other defectives. Competent psychiatrists and other specialists from the state hospitals in various parts of the state, the University of Minnesota Medical School, and its affiliate, the Mayo Clinic, may be and frequently are called by the probate courts to give expert testimony and advice in cases where no qualified men are available locally. However, it is probable that in most places there would be at hand experienced medical practitioners, with a considerable work-

ing knowledge of nervous and mental diseases derived from their regular medical education and experience, who would be quite competent to read the signs of psychopathic personality.

It is elementary that a competent tribunal to hear and determine is a requisite of due process. However, the composition of the tribunal (no jury trial being required) is entirely subject to the control of the state. See *Simon v. Craft* and other cases cited in the discussion of the requisites of due process, *supra* p. 34, also under jury trial, *supra* p. 36.

The probate court is certainly an adequate tribunal. It is to be presumed that the court will call to its aid competent medical assistants, and that they will discharge their duties with due regard for the rights of the patient. Their errors, if any, are subject to applicable remedies, as before stated.

Appellant considers that with respect to procedure and protection of personal rights the Minnesota act in question compares unfavorably with the Michigan law, Act No. 196, Public Acts 1937, which was declared invalid by the Michigan Supreme Court, and with the Illinois act of 1938, Jones' Illinois Annotated Statutes, Section 37.665 (4) (appellant's brief pp. 55-56). It is apparent that appellant in making this comparison has overlooked many important provisions of the act in question and other Minnesota laws to which attention has been called in this brief, and that the Minnesota act goes much further than either of the other two acts in safeguarding personal rights.

The Michigan act was held invalid as an amendment to an existing criminal law upon grounds which have no

bearing here. It is significant that the original provision upon which the amendment was grafted was passed in 1927, indicating a recognition by the Michigan legislature at that time of the need for special treatment of psychopathics, sex degenerates, and sex perverts.

People v. Frontczak, 286 Mich. 51, 281 N. W. 534.

V.

PRIVILEGES AND IMMUNITIES OF CITIZENS.

Appellant contends that by adoption of the laws relating to insanity, the act operates to impose upon one who is found to have a psychopathic personality all the disabilities attaching to insane persons (Brief page 58). Appellant argues that with respect to certain rights claimed to be thus affected the act violates the privileges and immunities clause of the Fourteenth Amendment. (Brief page 60-61).

Appellant's suggestion that these disabilities are imposed upon one who is merely alleged to have a psychopathic personality (Brief page 59) is untenable, being based upon a wholly unreasonable construction of the act.

The disabilities mentioned by appellant involve the following matters:

(1) Right to vote,
(2) Marriage,
(3) Competency to testify as witness,
(4) Jury service,
(5) Divorce,
(6) Competency to make wills,

(7) Qualification as partner,
(8) Right to sue or be sued,
(9) Right to contract,
(10) Subjection to authority of guardian.

With respect to most, if not all, of these matters, the suggested disabilities do not result ipso facto from mere commitment for insanity, and would not result upon a finding of a psychopathic personality. Under the Minnesota laws, a commitment for insanity does not automatically subject the insane person to guardianship, nor make him incompetent in the legal sense for all purposes, although it may for some purposes, as hereinafter pointed out. Under the probate code, in order to have a person declared legally incompetent and a guardian appointed, separate proceedings must be instituted, with notice and hearing, wherein proof of the facts necessary to support the petition must be made independently of any proceedings which may have been had for commitment of the person concerned to an institution. (Mason's 1938 Supplement, Sections 8992-129 to 8992-134).

Moreover, it is by no means certain that the state courts would construe the act in question as imposing upon persons with psychopathic personalities all the disabilities pertaining to insane persons. It is altogether possible that the courts, applying the well settled rules of statutory construction, would hold that the purposes of the psychopathic personality act were fully accomplished by adoption of the laws relating to the commitment, detention, and care of insane persons, and that it was not the intention of the legislature to impose any disabilities other than those which would necessarily result from confinement in a state hospi-

tal. Even if the courts did not go thus far in the matter of construction, it is at least to be presumed that so far as fairly permissible they would construe the act so as to avoid infringing any constitutional rights, and would make necessary exceptions in order to accomplish that result.

Jacobson v. Massachusetts, and other cases cited, *supra,* page 18.

None of these points was passed upon or even inferentially referred to in the opinion of the Minnesota Supreme Court in the instant case. So far as appears therefrom or from the remainder of the record the contention that there was a violation of the privileges and immunities clause, though mentioned in the initial petition for writ of prohibition, was not urged upon the attention of the state supreme court. We are therefore in the dark as to how that court would construe the law in an actual case where it was claimed that some privilege or immunity guaranteed by the constitution was infringed. So far none of appellant's personal rights has been violated. He has not even been arrested. We do not seek to foreclose consideration of any material question, but so far as appellant's privileges and immunities covered by the Fourteenth Amendment are concerned, the case is moot and the court might properly refuse to consider any issues raised thereunder.

Dahnke-Walker Co. v. Bondurant, 257 U. S. 282, 289.
Northwestern Bell Telephone Co. v. Neb. State Ry. Comm'n., 297 U. S. 471, 473.

Even if it should be held that constitutional privileges and immunities might be infringed in consequence of a commitment under the act, it would not necessarily invali-

date the act in respect of its main purposes, the examination, confinement, and care of persons found to have psychopathic personalities. A statute may be held invalid as to one set of facts yet valid as to another.

Dahnke-Walker Co. v. Bondurant, supra, p. 289, and cases cited.

Du Pont v. Commissioner, 289 U. S. 685, 688.

Snyder v. Massachusetts, 291 U. S. 97, 116.

If the foregoing propositions are correct, it is unnecessary to proceed further on this branch of the case. However, in case the court should deem it material to consider the effect of the act in question on privileges and immunities under the Fourteenth Amendment, we submit that none of the rights which appellant claims would be affected except the right to vote for national officers and the right to do business and make contracts is within the privileges and immunities clause, and that if any right covered by that clause is affected by the act, it is not to such degree as would amount to an abridgment in violation of the constitution.

The privileges and immunities protected by the Fourteenth Amendment are only those that arise from the constitution and laws of the United States and not those that spring from other sources.

Slaughter Cases, 16 Wall. 36, 74.

Maxwell v. Dow, 176 U. S. 581, 587.

Twining v. N. J., 211 U. S. 78, 93.

Colgate v. Harvey, 296 U. S. 404, 429.

Breedlove v. Suttles, 302 U. S. 277, 283.

Palko v. Conn., 302 U. S. 319, 329.

In these and other cases this court has defined the field of application of the privileges and immunities clause, but so far as we can discover it has never held that any such rights as those mentioned by appellant are within that field except the right to vote for national officers and, within certain limits, the right to do business and make contracts. The privileges and immunities clause was given what is regarded as its broadest construction in the case of Colgate v. Harvey, supra, where it was held to protect to a limited extent the right of a citizen residing in one state to make loans in another, as an attribute of national citizenship. However, the decision in that case did not conflict with the rule elsewhere recognized that the privileges and immunities protected by the Fourteenth Amendment are subject to reasonable regulation by the states. If this were not the rule a serious impairment of the sovereignty of the several states would result, for they would be powerless to regulate within their borders many matters which are essential to the proper administration of state government and which have always been regarded as subject to state jurisdiction. The further the privileges and immunities clause is extended, the greater would be the impairment of state sovereignty.

It would seem that no more need be said on the subject of privileges and immunities, but we submit the following discussion, for such consideration as the court may wish to give, showing that the effect of the act in question on the various personal rights mentioned by appellant is not nearly so serious as he supposes.

(1) *Right to Vote.*

The right to vote for national officers depends, under Article 1, Section 2, of the Federal Constitution, upon the qualifications prescribed by each state, through its constitution or laws, for electors of the most numerous branch of the state legislature.

Ex parte Yarbrough, 110 U. S. 651, 663.
Breedlove v. Suttles, 302 U. S. 277, 283.

In Minnesota the qualifications for voting are prescribed by Article 7 of the State Constitution. The constitutional provisions are complete and exclusive, leaving the legislature no control over the qualifications for voting. The state constitution, in Section 2 of Article 7, provides that no person under guardianship, or who may be non compos mentis or insane, shall be entitled to vote at any election in the state. So far as we can discover the Minnesota Supreme Court has never construed this provision. Whether the court would hold it broad enough to cover a person with a psychopathic personality is a matter of conjecture. However, it could hardly be said that to deny the franchise to one who had been found to be a chronic and dangerous sex pervert, requiring confinement for his own benefit and for the protection of society, would be so unreasonable as to abridge the privileges and immunities of citizens in violation of the Fourteenth Amendment to the Federal Constitution.

(2) *Marriage.*

This court recognizes that the states have a large measure of control over the marriage relation.

Maynard v. Hill, 125 U. S. 190, 205.

Haddock v. Haddock, 201 U. S. 562.

In Minnesota marriage between persons either one of whom is epileptic, an imbecile, feeble-minded, or insane is forbidden (Mason's Statutes 1927, Section 8564). Whether the psychopathic personality act would operate to extend this prohibition to persons committed thereunder is purely a matter for determination by the state courts. There is no ground for supposing that a statute so providing would violate the privileges and immunities clause of the Fourteenth Amendment.

(3) *Competence as Witness.*

Mason's Minnesota Statutes 1927, Section 9814, provides:

"Every person of sufficient understanding . . . may testify in any action . . . except as follows:

* * * * *

6. * * * persons of unsound mind."

Id. Section 9819 provides:

"Where an infant or person apparently of weak intellect is produced as a witness the court may examine him to ascertain his capacity * * *."

It is well settled in Minnesota that the test of mental capacity to testify is whether the witness is possessed of such an understanding as enables him to retain in memory

the events of which he has been a witness, and whether he understands the nature and obligation of an oath. If a person meets these requirements, the fact that he may be insane or feebleminded will not disqualify him as a witness.

Cannady v. Lynch, 27 Minn. 435, 8 N. W. 597.
State v. Hayward, 62 Minn. 474, 494, 65 N. W. 63.
State v. Prokosch, 152 Minn. 86, 187 N. W. 971.

This court has approved the same principle.

District of Columbia v. Armes, 107 U. S. 519.

It is clear that commitment under the psychopathic personality act would not of itself render a person incompetent to testify as a witness.

(4) *Jury Service.*

Persons "not of sound mind or discretion" are disqualified from serving as grand or petit jurors in Minnesota (Mason's Statutes 1927, Sections 10,605 and 9,459). A grand juror may be challenged on the ground that he is insane (Id. Section 10,615). A petit juror may be challenged on the ground of "unsoundness of mind, or such defect in the faculties of the mind, or organs of the body, as renders him incapable of performing the duties of a juror." (Id. Sections 10,736 and 9,294).

The same rules apply here as with respect to witnesses, *supra.*

(5) *Divorce.*

In Minnesota incurable insanity, attended by regular treatment therefor and confinement in an institution for at least five years, is a ground for divorce (Mason's Statutes, 1938 Supplement, Section 8585). Whether such ground exists is a matter for judicial determination in each case. The same principles as outlined under Marriage, supra, are applicable here.

(6) *Testamentary Capacity.*

Mason's Minnesota Statutes, 1938 Supplement, Section 8992-34, provides:

> "Every person of sound mind . . . may dispose of his estate . . . by his last will in writing * * *"

It is well settled in Minnesota that one who comprehends his relation to those who would naturally have claims on his bounty, the extent and situation of his property, and the effect of the will in disposing of it, and is able to hold these things in his mind long enough to form a rational judgment concerning them, is competent to make a will.

In re Estate of Jernberg, 153 Minn. 458, 190 N. W. 990.

This is true notwithstanding the testator may be mentally deficient in other respects. The Minnesota Supreme Court has even held that a person who had been committed to guardianship as feeble-minded but who possessed the

qualifications above stated was competent to make a will. Woodville v. Morrill, 130 Minn. 92, 153 N. W. 131.

Obviously a finding of psychopathic personality would not be self-sufficient to prove that a testator was incompetent.

(7) *Qualification as Partner.*

One's capacity to become a partner would, of course, depend on his capacity to contract, discussed below.

As to dissolution of partnership, Mason's Minnesota Statutes 1927, Section 7415, provides:

> "On application by or for a partner, the court shall decree a dissolution whenever:
>
> (a) a partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind * * *"

Whether this would affect a person with a psychopathic personality would be a judicial question in each case, as in case of the other matters above mentioned.

(8) *Right to Sue or Be Sued.*

(9) *Right to Contract.*

These two subjects are related and subject to the same general legal principles. There are no pertinent statutory provisions aside from those of special application, such as concerning divorce and partnership, *supra*,

and Mason's Statutes 1927, Sections 9169 and 9170, authorizing appointment of a guardian ad litem for an insane person.

As before shown (supra p. 43), a commitment for any form of mental deficiency in Minnesota does not, *ipso facto*, render a person incompetent to manage his property or affairs or subject his estate to guardianship. Separate proceedings are necessary for that purpose.

It is well settled in Minnesota that the contract of an insane person is not void but voidable, that a person may be insane on some subject and still be able to manage his property and affairs, and that commitment to a state institution is not evidence of incapacity.

Knox v. Haug, 48 Minn. 58, 61, 50 N. W. 934.

Schultz v. Oldenburg, 202 Minn. 237, 243, 277 N. W. 918.

It follows that commitment for psychopathic personality would not *ipso facto* affect one's capacity to contract or to become a party to a legal action.

(10) *Guardianship.*

As before shown, commitment for mental deficiency in Minnesota does not *ipso facto* subject a person to guardianship for any purpose except confinement and care by the state pursuant to the commitment (supra p. 43).

CONCLUSION.

The Minnesota psychopathic personality act, Laws 1939, Chapter 369, is not unconstitutional or invalid in respect of any of the points raised by appellant. The act should be sustained as a valid exercise of the police power in the interests of the persons affected and of society. The judgment of the state supreme court should be affirmed.

Respectfully submitted,

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APPENDIX.

MINNESOTA STATUTES RELATING TO INSANITY.

Mason's Minnesota Statutes, 1938 Supplement.

(Comprising sections amended after Mason's Minn. Statutes 1927)

8992-173. **Voluntary hospitalization.**—Any insane, inebriate, feebleminded, or epileptic person desiring to receive treatment at a state institution may be admitted upon his own application, in such manner and upon such conditions as the state board of control may determine. During the time of such treatment and until the expiration of three days after such person in writing demands his release, the superintendent of such institution is authorized and empowered to detain him as though he had been duly committed. If any such person demands his release, the superintendent if he deems such release not to be for the best interest of such person, his family, or the public, shall file a petition for commitment in the probate court of the county wherein such institution is located, within three days after such demand.

8992-174. **Institution of proceedings.**—Unless otherwise indicated by the context, the word "patient" as used in this article means any person for whose commitment as an insane, inebriate, feebleminded, or epileptic person, proceedings have been instituted or completed. Any reputable citizen may file in the court of the county of the patient's settlement or presence a petition for commitment setting forth the name and address of the patient and of his nearest relatives and the reasons for the appli-

ERRATA.

Appellee's brief, State of Minn. ex rel. Pearson v. Probate Court

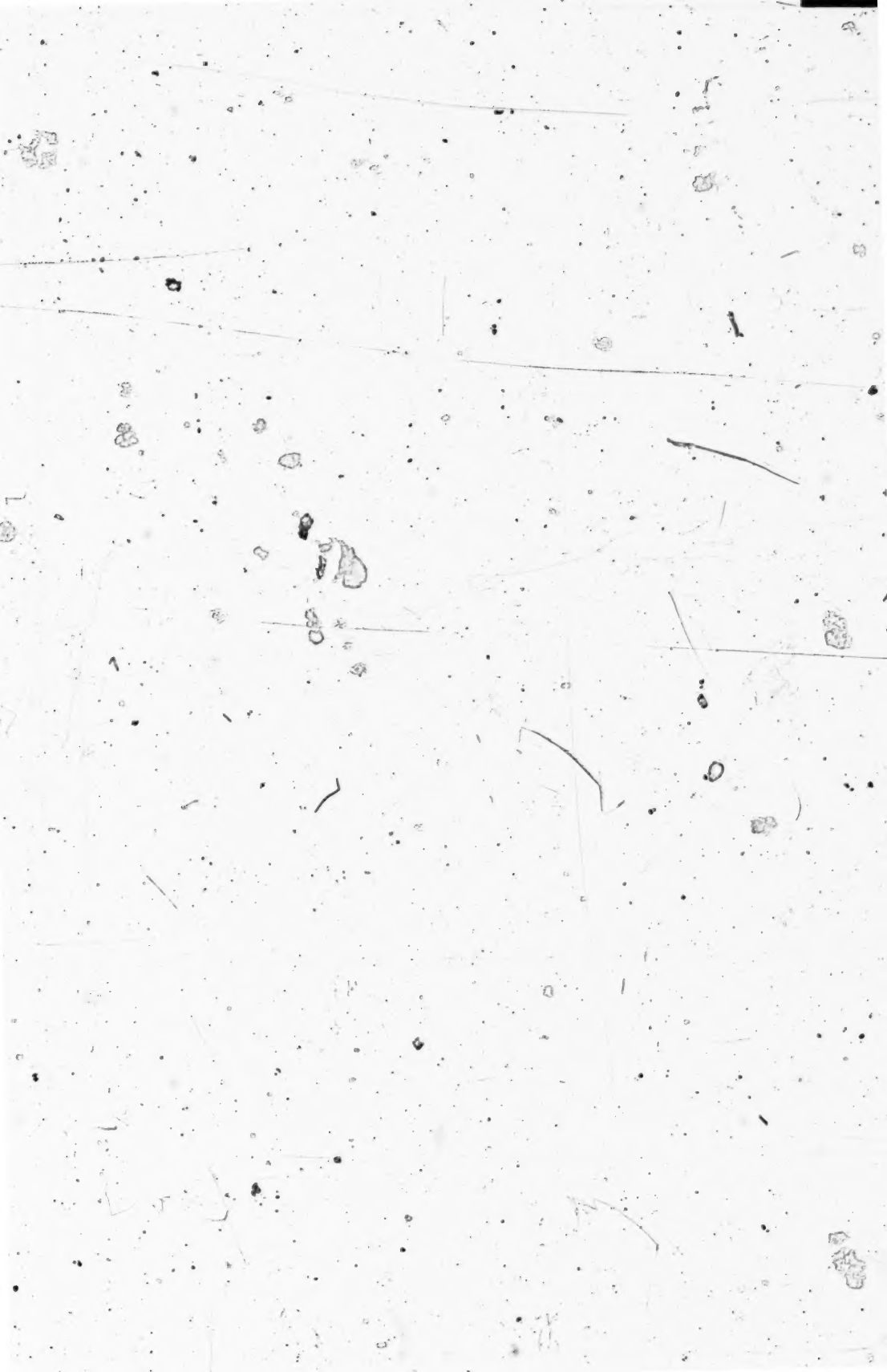
On pages 54-55, in lieu of Mason's Minnesota Statutes, 1938 Supplement, Sec. 8992-174, insert the following amended section from Laws 1939, Chapter 270, Section 10, wherein all the former provisions were retained, with the insertion of the matter in italics.

Sec. 10. **Institution of proceedings.**—Laws 1935, Chapter 72, Section 174 is hereby amended to read as follows:

"Unless otherwise indicated by the context, the word 'patient' as used in this article means any person for whose commitment as an insane, inebriate, feebleminded, or epileptic person, proceedings have been instituted or completed. Any reputable citizen may file in the court of the county of the patient's settlement or presence a petition for commitment setting forth the name and address of the patient and of his nearest relatives and the reasons for the application. If the court determines it to be for the best interest of the patient or of his family or of the public, the court may direct the sheriff or any other person to apprehend the patient and to take him to and confine him for observation and examination, in any hospital or any other place or institution consenting to receive him in the county wherein the proceedings are pending.

The person, hospital, or institution ordered by the court to make such apprehension, conveyance, or confinement, may execute the order on any day and at any time thereof, by using all necessary means, including the breaking open of any door, window or other part of the building, vehicle, boat or other place in which the patient is located, and the imposition of necessary restraint upon the person of such patient.

Upon the filing of such petition, written notice thereof shall be given to the county attorney who shall appear for and protect the rights of the patient, unless other counsel has been retained by or for the patient. If the court determines that the patient is financially unable to obtain counsel and that the interests of the patient require counsel other than the county attorney, or if the county attorney be absent, ill, or disqualified, the court may appoint counsel for him. If the patient has no settlement in this state, all proceedings shall be stayed until the state board of control shall have consented thereto."



cation. If the court determines it to be for the best interest of the patient or of his family or of the public, the court may direct the sheriff or any other person to apprehend the patient and to take him to and confine him for observation and examination, in any hospital or any other place or institution consenting to receive him in the county wherein the proceedings are pending. Upon the filing of such petition, written notice thereof shall be given to the county attorney who shall appear for and protect the rights of the patient, unless other counsel has been retained by or for the patient. If the court determines that the patient is financially unable to obtain counsel and that the interests of the patient require counsel other than the county attorney, or if the county attorney be absent, ill, or disqualified, the court may appoint counsel for him. If the patient has no settlement in this state, all proceedings shall be stayed until the state board of control shall have consented thereto.

8992-175. **Examination.**—The patient shall be examined at such time and place and upon notice to such persons and served in such manner as the court may determine. If he be obviously inebriate, feebleminded, or epileptic, and if the county attorney consent thereto in writing, the examination may be made by the court; otherwise the court shall appoint two duly licensed doctors of medicine, or in feebleminded proceedings two persons skilled in the ascertainment of mental deficiency, to assist in the examination. Upon the filing of a petition for the commitment of a feebleminded or epileptic patient, the court shall fix the time and place for the hearing thereof, of which ten days' notice by mail shall be given to the

state board of control, and to such other persons and in such manner as the court may direct.

The examiners and the court shall report their findings upon such forms as may be prescribed by such board, one of which shall be filed in court and another shall be transmitted to such board. The court shall determine the nature and extent of the property of the patient committed and of the persons upon whom liability is imposed by law for his care and support, making such findings upon such forms as may be prescribed by such board, one of which shall be filed in court and another shall be transmitted to such board.

8992-176. **Commitment.**—If the patient is found to be insane or inebriate, the court shall issue to the sheriff or any other person a warrant in duplicate, committing the patient to the custody of the superintendent of the proper state hospital, or to the superintendent or keeper of any private licensed institution for the care of inebriates or insane persons; provided, however, that such patients are required to pay the necessary hospital charge. If such patient be entitled to care in any institution of the United States in this state, such warrant shall be in triplicate, committing him to the joint custody of the superintendents of the proper state and federal institution. If such federal institutions be unable or unwilling to receive the patient at the time of commitment, he subsequently may be transferred to it upon its request. Such transfer shall discharge his commitment to the state institution and constitute a sole commitment to the federal institution.

If the patient is found to be feebleminded or epileptic, the court shall appoint the State Board of Control guard-

ian of his person and commit him to its care and custody.

Whenever a defendant in a criminal proceedings has been examined in the probate court, pursuant to an order of the state or federal district court, the probate court shall transmit its findings and return the defendant to such district court, unless otherwise ordered. A duplicate of the findings shall be filed in the probate court but there shall be no petition, property or report, nor commitment, unless otherwise ordered.

8992-177. **Payment of fees, etc.**—In each proceedings the court shall allow and order paid to each witness subpoenaed the fees and mileage prescribed by law, to each examiner the sum of five dollars per day for his services and fifteen cents for each mile traveled, to the person to whom the warrant of apprehension is issued the sum of three dollars per day and actual disbursements for the travel, board, and lodging of the patient, of himself, and of authorized assistants, and to the person conveying the patient to the place of detention the sum of three dollars per day and actual disbursements for the travel, board, and lodging of the patient, of himself and of authorized assistants, and to the patient's counsel when appointed by the court, the sum of ten dollars per day. Upon such order the county auditor shall issue a warrant on the county treasurer for the payment thereof.

Whenever the settlement of the patient is found to be in another county, the court shall transmit to the county auditor a statement of the expenses of the apprehension, confinement, examination, commitment, and conveyance to the place of detention. Such auditor shall transmit the same to the auditor of the county of the patient's settle-

ment and such claim shall be paid as other claims against such county. If the auditor to whom such claim is transmitted shall deny the same, he shall transmit it with his objections to the state board of control which shall determine the question of settlement and certify its findings to each auditor. If the claim be not paid within thirty days after such certification, an action may be maintained thereon by the claimant county in the district court of the claimant county against the debtor county.

8992-178. **Release before commitment.**—Before the delivery of the warrant of commitment, the court may release an insane or inebriate patient to any person who files a bond to the State in such amount as the court may direct, conditioned upon the care and safekeeping of the patient; but no person against whom a criminal proceeding is pending or who is dangerous to the public shall be so released.

8992-179. **Release after commitment.**—Any insane, inebriate, feebleminded, or epileptic patient committed to the state board of control or any institution under its control, may be released to any person if such board consent thereto or if a bond to the State be filed with such board in such amount as it may fix, conditioned upon the care and safekeeping of the patient and the payment of all expenses, damages, and other items arising from any act of such patient.

8992-180. **Detention.**—Upon delivery of an insane or inebriate patient to the institution to which he has been committed, the superintendent thereof shall retain the dupli-

cate warrant and endorse his receipt upon the original which shall be filed in the court commitment. Upon such filing, the court shall transmit a copy of the warrant with all endorsements of the state board of control. After such delivery, the patient shall be under the care, custody, and control of such board until discharged by it or by a court of competent jurisdiction; but no patient found by the committing court to be dangerous to the public shall be released from custody by such board or any institution except upon order of a court of competent jurisdiction. Whenever a patient is paroled, discharged, transferred to another institution, dies, escapes, or is returned, the institution having charge of the patient shall file notice thereof in the court of commitment.

Upon commitment of a feebleminded or epileptic patient, the state board of control may place him in an appropriate home, hospital, or institution, or exercise general supervision over him anywhere in the state outside any institution through any child welfare board or other appropriate agency thereto authorized by said board of control.

8992-181. **Commissioner may act.**—Whenever the probate judge is unable to act upon any petition for the commitment of any patient, the court commissioner may act in the place of such judge.

8992-182. **Malicious petition.**—Whoever for a corrupt consideration or advantage, or through malice, shall make or join in or advise the making of any false petition or report, or shall knowingly or wilfully make any false representation for the purpose of causing such petition or report to be made, shall be guilty of a felony and punished

by imprisonment in the state prison for not more than one year or by a fine of not more than five hundred dollars.

8992-186. **Petition.**—Every application shall be by petition signed and verified by or on behalf of the petitioner. No defect of form or in the statement of facts in any petition shall invalidate any proceedings.

8992-143. **Restoration to capacity.**—Any person who has been adjudicated insane or inebriate, or any person who is under guardianship (except as a minor, or as a feebleminded or epileptic person, or a person under guardianship in the juvenile court), or his guardian, or any other person interested in him or his estate may petition the court in which he was so adjudicated to be restored to capacity. Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given to the State Board of Control if he was under its control and has not been discharged by it, and to such other persons and in such manner as the court may direct.

Any person may oppose such restoration. Upon proof that such person is of sound mind and capable of managing his person and estate, and that he is not likely to expose himself or his family to want or suffering, the court shall adjudge him restored to capacity.

If such person has been adjudged insane or inebriate by a court of a county wherein he had no settlement, the petition for restoration may be filed in the court of the county of his settlement in which shall be filed certified copies of such instruments of the file of the court of commitment as the court may direct. The court wherein

ERRATA.

Appellee's brief, State of Minn. ex rel. Pearson v. Probate Court

On pages 60-61, in lieu of Mason's Minnesota Statutes, 1938 Supplement, Sec. 8992-143, insert the following amended section from Laws 1939, Chapter 270, Section 8, wherein all the former provisions were retained, with the insertion of the matter in italics.

Sec. 8. **Restoration to capacity.**—Laws 1935, Chapter 72, Section 143 is hereby amended to read as follows:

"Any person who has been adjudicated insane or inebriate, or any person who is under guardianship (except as a minor, or as a feebleminded or epileptic person, or a person under guardianship in the juvenile court), or his guardian, or any other person interested in him or his estate may petition the court in which he was so adjudicated to be restored to capacity. Upon the filing of such petition, the court shall fix the time and place for the hearing thereof, notice of which shall be given to the State Board of Control if he was under its control and has not been discharged by it, and to such other persons and in such manner as the court may direct.

Any person may oppose such restoration. Upon proof that such person is of sound mind and capable of managing his person and estate, and that he is not likely to expose himself or his family to want or suffering, the court shall adjudge him restored to capacity.

In proceedings for the restoration of an insane or inebriate person, the court may appoint two duly licensed doctors of medicine to assist in the determination of the mental capacity of the patient. The court shall allow and order paid to each doctor so appointed the sum of five dollars per day for his services and fifteen cents for each mile traveled. Upon such order the county auditor shall issue a warrant on the county treasurer for the payment thereof. If the court notifies the county attorney he shall attend the hearing and if he deems it for the best interest of the public he shall oppose the restoration in the probate court and appellate courts.

If such person has been adjudged insane or inebriate by a court of a county wherein he had no settlement, the petition for restoration may be filed in the court of the county of his settlement in which shall be filed certified copies of such instruments of the file of the court of commitment as the court may direct. The court wherein restoration is granted or denied shall transmit to the court of commitment a certified copy of the order granting or denying restoration. The expenses of such certified copies and of such transmittal shall be paid by the county of such person's settlement. If the venue has been transferred, no proceedings need be had in the court from which the venue was transferred."

restoration is granted or denied shall transmit to the court of commitment a certified copy of the order granting or denying restoration. The expenses of such certified copies and of such transmittal shall be paid by the county of such person's settlement. If the venue has been transferred, no proceedings need be had in the court from which the venue was transferred.

4523. **Patients may be paroled in certain cases.**—The superintendent, whenever he deems it advisable that a patient should return home or remain away from the institution on trial, may allow him to be absent on parole for a period not exceeding one year. The order of commitment shall remain in force until he is legally discharged, and he may be recalled at any time.

4524. **Discharge of patients.**—Such superintendent may discharge any patient certified by him to be recovered, unless charged with or convicted of some criminal offense. In all other cases, patients shall be discharged only by the board of control. Whenever the superintendent recommends the discharge of a patient, improved or unimproved, he shall state his reasons therefor.